



6351-01-P

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (“PRA”), this notice announces that the Information Collection Request (“ICR”) abstracted below has been forwarded to the Office of Management and Budget (“OMB”) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

**DATES:** Comments must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (“OIRA”) in OMB, within 30 days of the publication of this notice, by either of the following methods. Please identify the comments by “OMB Control No 3038-0021.”

- By email addressed to: *OIRAsubmissions@omb.eop.gov* or
- By mail addressed to: the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW, Washington, DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (CFTC or Commission) by any of the following methods. The copies sent to the Commission also should refer to “OMB Control No. 3038-0021.”

- By mail addressed to: Christopher Kirkpatrick, Secretary of the Commission,  
Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street,  
NW, Washington, DC 20581;
- By Hand Delivery/Courier to the same address; or
- Through the Commission's website at <http://comments.cftc.gov>. Please follow the instructions for submitting comments through the website.

A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting <http://RegInfo.gov>.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.<sup>1</sup> The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

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<sup>1</sup> 17 CFR 145.9.

**FOR FURTHER INFORMATION CONTACT:** Jocelyn Partridge, Special Counsel,  
Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418-5926;  
email: [jpartridge@cftc.gov](mailto:jpartridge@cftc.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulations Governing Bankruptcies of Commodity Brokers (OMB Control No. 3038–0021). This is a request for an extension of a currently approved information collection.<sup>2</sup>

*Abstract:* This collection of information involves the reporting, recordkeeping, and third party disclosure requirements set forth in the CFTC’s bankruptcy regulations for commodity broker liquidations, 17 CFR Part 190.<sup>3</sup> These regulations apply to commodity broker liquidations under Chapter 7, Subchapter IV of the Bankruptcy Code.<sup>4</sup>

The reporting requirements include, for example, notices to the Commission regarding the filing of petitions for bankruptcy and notices to the Commission regarding the intention to transfer open commodity contracts in a commodity broker liquidation. The recordkeeping requirements include, for example, the statements of customer accounts that a trustee appointed for the purposes of a commodity broker liquidation (Trustee) must generate and adjust as set forth in the regulations. The third party disclosure requirements include, for example, the disclosure statement that a commodity broker must provide to its customers containing information regarding the manner in which customer property is treated under Part 190 of the Commission’s regulations in the event of a bankruptcy and, in the event of a commodity broker

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<sup>2</sup> There are two information collections now associated with OMB Control No. 3038-0021. The first includes the reporting, recordkeeping, and third party disclosure requirements applicable to a single respondent in a commodity broker liquidation (*e.g.*, a single commodity broker or a single trustee) within the relevant time period that are provided for in Commission regulations 190.02(a)(1), 190.02(a)(2), 190.02(b)(1), 190.02(b)(2), 190.02(b)(4), 190.02(c), 190.03(a)(1), 190.03(a)(2), 190.04(b) and 190.06(b). The second information collection includes the third party disclosure requirements provided for in Commission regulations 190.06(d) and 190.10(c) which are applicable on a regular basis to multiple respondents (*i.e.*, multiple futures commission merchants).

<sup>3</sup> These include the requirements contained in Commission regulations 190.02(a)(1), 190.02(a)(2), 190.02(b)(1), 190.02(b)(2), 190.02(b)(4), 190.02(c), 190.03(a)(1), 190.03(a)(2), 190.04(b), 190.06(b), 190.06(d), and 190.10(c).

<sup>4</sup> 11 U.S.C. 761 *et seq.*

liquidation, certain notices that a Trustee must provide to customers and to the persons to whom commodity contracts and specifically identifiable customer property have been or will be transferred. The information collection requirements are necessary, and will be used, to facilitate the effective, efficient, and fair conduct of liquidation proceedings for commodity brokers and to protect the interests of customers in these proceedings both directly and by facilitating the participation of the CFTC in such proceedings.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB number. On June 25, 2018, the Commission published in the *Federal Register* notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 83 FR 29547, June 25, 2018 (“60-Day Notice”). The Commission did not receive any relevant comments. Accordingly, it did not alter the burden estimates set forth in the 60-Day Notice in response to comments received.<sup>5</sup>

*Burden Statement:* The Commission notes that commodity broker liquidations occur at unpredictable and irregular intervals when particular commodity brokers become insolvent. While a commodity broker liquidation has not occurred in the past three years, the Commission took the conservative approach of maintaining the assumption contained in the previous renewal of this information collection that, on average, a commodity broker liquidation would occur every three years. The Commission generally has retained the burden hour estimates set forth in the previous information collection as there have been no interim experiences that would warrant

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<sup>5</sup> As noted below, the Commission reduced the burden hours associated with the third party disclosures applicable to multiple respondents because the required documents are standardized and unchanged from the prior renewal. Accordingly, the time that the average respondent would spend drafting and sending the notice and disclosure is minimal. *See infra* fn.6.

altering those estimates.<sup>6</sup> The Commission further notes, however, that the information collection burden will vary in particular commodity broker liquidations depending on the size of the commodity broker, the extent to which accounts are able to be quickly transferred, and other factors specific to the circumstances of the liquidation.

The respondent burden for this information collection is estimated to be as follows:<sup>7</sup>

- Reporting:<sup>8</sup>

*Estimated Number of Respondents:* 1.

*Estimated Annual Number of Responses per Respondent:* 1.33.

*Estimated Total Annual Number of Responses:* 1.33.

Estimated Annual Number of Burden Hours per Respondent: 1.33.

Estimated Total Annual Burden Hours: 1.33.

*Type of Respondents:* Commodity brokers, Trustees, and self-regulatory organizations.

*Frequency of Collection:* On occasion.

- Recordkeeping:<sup>9</sup>

*Estimated Number of Respondents:* 1.

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<sup>6</sup>The Commission has retained the burden hour estimates for the applicable regulations with two limited exceptions. First, the Commission no longer assigns burden hours to the discretionary notice that a Trustee may provide to customers in an involuntary commodity broker liquidation pursuant to Commission regulation 190.02(b)(3). There have been no involuntary commodity broker liquidations and none are anticipated. Accordingly, continuing to assign burden hours to this voluntary requirement would inappropriately inflate the burden hours of this information collection. Second, the Commission has reduced the burden hours assigned to the third party disclosure requirements that are applicable to multiple respondents (as set forth in Commission regulations 190.06(d) and 190.10(c)). The notice and disclosure required by these regulations, respectively, are standardized and unchanged from the prior renewal. Accordingly, the time that the average respondent would spend drafting and sending the notice and disclosure is minimal.

<sup>7</sup> Because a commodity broker liquidation is estimated to occur only once every three years, the previous information collection, in many cases, expressed the burden of the reporting, recordkeeping, and third party disclosure requirements in terms of the burden applicable to “.33” respondents. For clarity, this notice expresses such burdens in terms of those that would be imposed on *one* respondent during the three year period. While the applicable burden is expressed in a different way, as noted above, the burden hours generally remain unchanged.

<sup>8</sup>The reporting requirements are contained in Commission regulations 190.02(a)(1), 190.02(a)(2), and 190.06(b).

<sup>9</sup> The recordkeeping requirements are contained in Commission regulations 190.03(a)(1), 190.03(a)(2), and 190.04(b).

*Estimated Annual Number of Responses per Respondent:* 26,666.67.

*Estimated Total Annual Number of Responses:* 26,666.67.

*Estimated Annual Number of Burden Hours per Respondent:* 333.33.

*Estimated Total Annual Burden Hours:* 333.33.

*Type of Respondents:* Trustees.

*Frequency of Collection:* Daily and on occasion.

- Third Party Disclosures Applicable to a Single Respondent:<sup>10</sup>

*Estimated Number of Respondents:* 1.

*Estimated Annual Number of Responses per Respondent:* 6,671.32.

*Estimated Total Annual Number of Responses:* 6,671.32.

*Estimated Annual Number of Burden Hours per Respondent:* 1,034.63.

*Estimated Total Annual Burden Hours:* 1,034.63.

*Type of Respondents:* Trustees.

*Frequency of Collection:* On occasion.

- Third Party Disclosures Applicable to Multiple Respondents:<sup>11</sup>

*Estimated Number of Respondents:* 125.

*Estimated Annual Number of Responses per Respondent:* 2,000.

*Estimated Total Annual Number of Responses:* 250,000.

*Estimated Annual Number of Burden Hours per Respondent:* 40.

*Estimated Total Annual Burden Hours:* 2,500.

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<sup>10</sup> These third party disclosure requirements are contained in Commission regulations 190.02(b)(1), 190.02(b)(2), 190.02(b)(4), and 190.02(c).

<sup>11</sup> See fn. 1. The Commission is setting forth a new information collection under OMB Control No. 3038-0021 to separately account for the third party disclosure requirements provided for in Commission regulations 190.06(d) and 190.06(c) that are applicable on a regular basis to multiple respondents (*i.e.*, multiple futures commission merchants).

*Type of Respondents:* Futures commission merchants.

*Frequency of Collection:* On occasion.

There are no new capital or start-up or operations costs associated with this information collection, nor are there any maintenance costs associated with this information collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 24, 2018.

**Christopher Kirkpatrick,**

*Secretary of the Commission.*

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